

REMARKS

Applicants respectfully request reconsideration of the present application in view of the foregoing amendments and in view of the reasons that follow.

Claims 32 and 34 are currently being amended without prejudice or disclaimer to address clerical issues raised by the Examiner.

After amending the claims as set forth above, claims 32 and 34 will remain pending in this application and are presented for reconsideration.

Declaration Under 37 C.F.R. § 1.132 of Angel F. Lopez:

Concurrently submitted is a Declaration Under 37 C.F.R. § 1.132, that addresses the deposit issue.

Summary of Interview dated January 9, 2008:

Applicants thank Examiner Mertz for taking the time to discuss the case with the undersigned attorney during the telephonic interview held January 9, 2008. Claims 32 and 34 were discussed. The Examiner's Summary of Interview correctly states the subject matter discussed during the interview.

Response to Rejection under 35 U.S.C. § 112, ¶ 1

The Examiner rejected claims 32 and 34 for alleged lack of enablement. The Examiner argues that evidence of deposit of ATCC HB-12525 is required, under specified terms and conditions, per 37 C.F.R. § § 1.801-809.

As stated on page 23 of the specification, on April 29, 1998, the hybridoma cell-line HB-12525 was deposited under the Budapest Treaty with the American Type Culture Collection (ATCC), 101801 University Boulevard, Manassas, Virginia, U.S.A. The enclosed Declaration of Angel F. Lopez, under 37 C.F.R. § 1.132 also states that a) during the

pendency of the application, access to the deposit will be afforded to persons determined by the USPTO Commissioner to be entitled thereto; b) all restrictions, if any, imposed by applicant on the availability to the public of the deposited material will be irrevocably removed upon granting of a patent based on this application; c) the deposit will be maintained for a period of at least 30 years and at least 5 years after the date of the most recent request for a furnishing of a sample of the deposited biological material, and in any case the deposit will be available for the enforceable life of the patent based on this application; d) the deposit will be replaced if it should become necessary due to nonviability, contamination, or loss of capability to function in the manner described in the specification; and e) the ATCC HB-12525 cell line described in the specification is the same ATCC HB-12525 cell line which was deposited.

The Examiner also requires that the specification must be amended to recite the date of deposit and the full address of the depository. As noted above, page 23 of the specification already recites that on April 29, 1998, the hybridoma cell-line HB-12525 was deposited under the Budapest Treaty with the American Type Culture Collection (ATCC), 101801 University Boulevard, Manassas, Virginia, U.S.A., under designation ATCC HB-12525. Therefore, no further amendments to the specification are believed to be necessary.

In view of these remarks and the enclosed declaration, applicants respectfully request withdrawal of this rejection.

Response to Rejection under 35 U.S.C. § 112, ¶ 2

The Examiner rejected claims 32 and 34 for alleged indefiniteness.

The examiner objected to the phrase “bins to” in line 6 of claims 32 and 34, but that phrase does not appear in either claim. Applicants respectfully submit that claims 32 and 34 in the Amendment filed with the Request for Continuing Examination properly recite “binds to.” Applicants reviewed this Amendment on USPTO PAIR, and the phrase “binds to” is recited in claims 32 and 34. Therefore, it is believed that no correction of this clerical error is necessary.

The examiner also objected to recitation of “the” in phrases “the IL-5” and “the binding” for alleged lack of antecedent basis. Applicants respectfully assert that the claims are definite as written. Nevertheless, the recitation of “the” has been deleted to expedite prosecution and to conform the claims to the Examiner’s style preference. One of skill in the art would readily understand that the deletion of “the” in claims 32 and 34 does not affect claim scope.

In the same vein, Applicants have amended the claims to change “BION-1 monoclonal antibody” to “monoclonal antibody BION-1” to conform to the Examiner’s style preference. One of skill in the art would readily understand that this amendment does not affect claim scope.

Applicants believe that the present application is in condition for allowance. Favorable reconsideration of the application is respectfully requested.

The Examiner is invited to contact the undersigned by telephone if it is felt that a telephone interview would advance prosecution.

The Commissioner is hereby authorized to charge any additional fees which may be required regarding this application under 37 C.F.R. §§ 1.16-1.17, or credit any overpayment, to Deposit Account No. 19-0741. Should no proper payment be enclosed herewith, as by a check or credit card payment form being in the wrong amount, unsigned, post-dated, otherwise improper or informal or even entirely missing, the Commissioner is authorized to charge the unpaid amount to Deposit Account No. 19-0741. If any extensions of time are needed for timely acceptance of papers submitted herewith, Applicants hereby petition for such extension under 37 C.F.R. § 1.136 and authorize payment of any such extensions fees to Deposit Account No. 19-0741.

Respectfully submitted,

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